



[Billing Code: 4810–31–P]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2018–0005; T.D. TTB–152; Ref: Notice No. 174]**

**RIN: 1513–AC38**

### **Establishment of the Upper Hudson Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 1,500-square mile “Upper Hudson” viticultural area in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The Upper Hudson viticultural area is not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

## **SUPPLEMENTARY INFORMATION:**

### **Background on Viticultural Areas**

#### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

### *Requirements*

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;

- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Upper Hudson Petition**

TTB received a petition from Andrew and Kathleen Weber, owners of Northern Cross Vineyard, on behalf of local grape growers and vintners, proposing to establish the “Upper Hudson” AVA in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The proposed Upper Hudson AVA covers approximately 1,500-square miles and is not located within any other AVA. There are 19 commercial vineyards with attached wineries covering approximately 67.5 acres within the proposed AVA. According to the petition, several vineyard owners are planning to expand their vineyards by a total of an additional 14 acres in the near future, and 4 new vineyards are also planned.

According to the petition, the distinguishing feature of the proposed AVA is its climate, relying on the USDA plant hardiness zone map and the growing

degree day accumulations (GDDs)<sup>1</sup> for the proposed AVA and the surrounding areas.

### *Plant Hardiness Zones*

According to the USDA plant hardiness zone map, which ranges from the coolest zone 1 to the warmest zone 13, the proposed Upper Hudson AVA falls into zones 5a and 5b. Average minimum temperatures in these zones range from –20 to –15 degrees F. The petition states that these average minimum winter temperatures are cold enough to damage or even kill many varieties of grapes. Therefore, vineyard owners within the proposed AVA plant cold hardy varieties such as Marquette, Frontenac, La Crescent, and La Crosse, which have been developed to withstand temperatures as low as –30 degrees F. Regions to the immediate east and west of the proposed Upper Hudson AVA are also classified as zones 5a and 5b. Regions farther to the west and northwest of the proposed AVA are classified as zones 3b, 4a, and 4b, with average minimum temperatures between –35 and –25 degrees F. The region to the south of the proposed AVA is classified as zones 6a and 6b with average minimum temperatures between –10 and 0 degrees F, and able to grow a wider variety of grapes.

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<sup>1</sup> In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 2d ed. 1974), pages 61–64.

### *Growing Degree Days*

The petition states that the locations within the proposed AVA achieved GDD accumulations ranging between 2,300 and 2,700. A GDD accumulation of over 2,500 is generally considered to be the minimum GDD accumulations needed to ripen most varieties of grapes.<sup>2</sup> According to the petition, the locations within the proposed AVA reach 2,500 GDDs late in September, meaning that the fruit typically has only a few weeks to continue maturing before the first frost sets in. The petition states that, as a result, wineries often must work with tart fruit and remove the tartness as part of the winemaking process through the use of malolactic fermentation, pH adjustment, or residual sugars.

Locations to the north and south of the proposed AVA have GDD accumulations over 2,700 due to the warming effects of Lake Champlain and the tidal portion of the Hudson River respectively. The petition states that grapes in these warmer regions have more time to mature before the first frost, so the grapes “have the tartness removed in the vineyard.”

The remaining locations, to the east, southeast, southwest, and west of the proposed Upper Hudson AVA, all have lower GDD accumulations than the proposed AVA. The petition claims that viticulture in these regions would be difficult because the GDD accumulations would not reach the levels necessary to reliably ripen most varieties of grapes.

As a result of its climate, the proposed Upper Hudson AVA is suitable for growing cold-hardy grape hybrids, but not the grape varieties that are commonly grown farther south within the established Hudson River Region AVA.

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<sup>2</sup> *Id.* at 61–64, 143.

## **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 174 in the Federal Register on April 9, 2018 (83 FR 15091), proposing to establish the Upper Hudson AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 174. In Notice No. 174, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on June 8, 2018.

### *Comments Received*

In response to Notice No. 174, TTB received seven comments, all of which expressed support for the proposed AVA. Some of the commenters suggested that the proposed AVA will increase tourism and provide economic benefits to the region. Others suggested that the establishment of the proposed Upper Hudson AVA will help to showcase the uniqueness of this area based on its climate. TTB did not receive any comments opposing the proposed AVA.

## **TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 174, TTB finds that the evidence provided by the petitioner supports the establishment of the Upper Hudson AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “Upper Hudson” AVA in all or portions of Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York, effective 30 days from the publication date of this document.

## **Boundary Description**

See the narrative description of the boundary of the Upper Hudson AVA in the regulatory text published at the end of this final rule.

## **Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text.

## **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in



compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, “Upper Hudson,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name “Upper Hudson” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. The establishment of the Upper Hudson AVA will not affect any existing AVA. The establishment of the Upper Hudson AVA will allow vintners to use “Upper Hudson” as an appellation of origin for wines made primarily from grapes grown within the Upper Hudson AVA if the wines meet the eligibility requirements for the appellation.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant adverse economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a

proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

### **Drafting Information**

Caroline Hermann of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

### **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

### **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.264 to read as follows:

#### **§ 9.264 Upper Hudson.**

(a) *Name.* The name of the viticultural area described in this section is “Upper Hudson”. For purposes of part 4 of this chapter, “Upper Hudson” is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Upper Hudson viticultural area are titled:

- (1) Glens Falls, New York—Vermont, 1989;
- (2) Albany, New York—Massachusetts—Vermont, 1989;
- (3) Amsterdam, New York, 1985; photoinspected 1990; and
- (4) Gloversville, New York, 1985; photoinspected 1992.

(c) *Boundary.* The Upper Hudson viticultural area is located in Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties in New York. The boundary of the Upper Hudson viticultural area is as described below:

(1) The point of the beginning is on the Glens Falls map at the intersection of U.S. Highway 9 and State Highway 32, in Glens Falls. From the beginning point, proceed east on State Highway 32 to its intersection with State Highway 254; then

(2) Proceed southeasterly along State Highway 254 to its intersection with U.S. Highway 4 in Hudson Falls; then

(3) Proceed south along U.S. Highway 4 to its intersection with State Highway 197 in Fort Edward; then

(4) Proceed east, then southeast along State Highway 197 to its intersection with State Highway 40 in Argyle; then

(5) Proceed southeast in a straight line to the intersection of State Highway 29 and State Highway 22 in Greenwich Junction; then

(6) Proceed south along State Highway 22, crossing onto the Albany map, to the highway's intersection with State Highway 7 in Hoosick; then

(7) Proceed southwest along State Highway 7, crossing the Hudson River, to the highway's intersection with State Highway 32 in Green Island; then

(8) Proceed south on State Highway 32 to its intersection with U.S. Highway 20 in Albany; then

(9) Proceed west on U.S. Highway 20 its intersection with U.S. Highway 9; then

(10) Proceed southwest along U.S. Highway 9 to its intersection with State Highway 443; then

(11) Proceed southwest, then westerly along State Highway 443, crossing onto the Amsterdam map, to the highway's intersection with an unnamed state highway known locally as State Highway 30 in Vroman Corners; then

(12) Proceed northwesterly along State Highway 30 to its intersection with State Highway 30A in Sidney Corners; then

(13) Proceed north along State Highway 30A, crossing over the Mohawk River, to the highway's intersection with State Highway 5 in Fonda; then

(14) Proceed east along State Highway 5 to its intersection with State Highway 67 in Amsterdam; then

(15) Proceed east along State Highway 67 to its intersection with an unnamed light-duty road known locally as Morrow Road; then

(16) Proceed northeast in a straight line, crossing over the southeastern corner of the Gloversville map and onto the Glens Falls map, to the point where Daly Creek empties into Great Sacandaga Lake; then

(17) Proceed northeast, then east along the southern shore of Great Sacandaga Lake to its confluence with the Hudson River in the town of Lake Luzerne; then

(18) Proceed south, then easterly along the southern bank of the Hudson River to its intersection with U.S. Highway 9 in South Glens Falls; then

(19) Proceed northwest along U.S. Highway 9, crossing the Hudson River, and returning to the beginning point.

Signed: September 10, 2018.

**John J. Manfreda,**

*Administrator.*

Approved: November 13, 2018.

**Timothy E. Skud,**

*Deputy Assistant Secretary,  
(Tax, Trade, and Tariff Policy).*

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